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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,490	12/30/1999	LINDSAY S. MACHAN	110129.411	7911
41551	7590	02/08/2006	EXAMINER	
SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVENYUE, SUITE 6300 SEATTLE, WA 98104-7092			HO, UYEN T	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/476,490

Applicant(s)

MACHAN ET AL.

Examiner

(Jackie) Tan-Uyen T. Ho

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-7, 11-20, 30-33, 35, 37 and 44-56 is/are pending in the application.
- 4a) Of the above claim(s) 44-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-7, 11-20, 30-33, 35, 37, 55, 56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 2, 3, 5-7, 12-17, 30, 31 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Lau (6,001,123). Lau discloses a device and method for treating patients having an aneurysm, wherein the device comprising a self-expanded stent graft as claimed (Figs. 13-16, Col. 25-27) which releases growth factor for inducing the in vivo adhesion of the stent-graft to vessel walls (col. 17, lines 26-67).

Regarding claim 15, the self-expanded tubular stent graft is balloon expandable if one desired to do so. The introductory statement of intended use, "balloon-expandable" and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Lau's device which is capable of being used as claimed if one desires to do so.

Regarding claims 16-17, the introductory statement of intended use, "adapted to release" and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Lau's device which is capable of being used as claimed if one desires to do so.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 11, 18-20, 32, 35, 37, 55, 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lau '123.

Regarding to claims 11, it is known in the art that many bifurcated areas in human vascular systems have aneurysm problem and it is also well known in the art to have bifurcated stent-graft for treat aneurysm at bifurcated areas in human vascular systems. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lau's stent-graft by having the stent-graft with bifurcated configuration in order to treat the aneurysm problem at a bifurcated vessel site.

Regarding claims 18-20, 32, 37, 56, a polymer coating for controlling drug release from an implant is well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply a coating for controlling growth factor release from Lau's stent-graft to make the stent graft in an inactive form during delivery and placement procedure and in an active form at a desired site in order to provide a better delivery and placement of the stent-graft and prevent active agent release at undesired site.

Regarding claims 4, 35 and 55, although, Lau does not disclose a vessel wall irritant is talcum powder, metallic beryllium or silica. The claimed materials are the well-known adhesion materials or/and that induce adhesion in art. Lau reference concerns about adhering the graft stent to the body lumen. Therefore, it would have been obvious to one having ordinary skill in the art to employ the materials as claimed to enhance the adhesion between the stent-graft and vessel wall.

To substitute a well known material based on its suitability for the intended use without special functional significance are not patentable, in re Hotchkiss v. Greenwood, 52 USPQ 248.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is 571-272-4696. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN NGUYEN can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



(Jackie) Tan-Uyen T. Ho  
Patent Examiner  
Art Unit 3731

February 2, 2006